

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION**

JACK JOHNSTON, individually and on behalf of those similarly situated,)	
)	
)	
)	
Plaintiffs,)	
)	CASE NO.: 4 : 17 - CV - 51 - JHM
v.)	
)	
J&B MECHANICAL, LLC,)	
)	
Defendant.)	

COMPLAINT AND REQUEST FOR JURY TRIAL

I. NATURE OF THE CASE

1. Plaintiff, Jack Johnston (“Johnston”), individually and on behalf of those similarly-situated, by counsel, brings this action against Defendant, J&B Mechanical, LLC, (“Defendant”) alleging failure to pay overtime compensation in violation of the Fair Labor and Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.* and Kentucky state law.

II. PARTIES

2. Johnston is a resident of the Commonwealth of Kentucky and has resided within the geographic boundaries of the Western District of Kentucky at all relevant times.

3. Defendant maintains offices and conducts business within the geographic confines of the Western District of Kentucky.

III. JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this complaint pursuant to 28 U.S.C. §1331; 28 U.S.C. §1367; and 29 U.S.C. § 216(b).

5. Defendant is an “employer” as that term is defined by 29 U.S.C. § 203(d).

6. Johnston, at all times relevant hereto, was an “employee” as that term is defined by 29 U.S.C. §203(e)(1).

7. Defendant is subject to the FLSA because its employees engaged in commerce and Defendant generates an annual gross volume of sales made or business done in excess of \$500,000.00.

8. This Court has supplemental jurisdiction over Johnston’s Kentucky state law claims pursuant to 28 U.S.C. §1367.

9. All events, transactions, and occurrences relevant to this lawsuit arose within the geographical environs of the Western District of Kentucky; thus venue is proper in this Court.

IV. FACTUAL ALLEGATIONS

10. Defendant is a corporation that serves the Feed, Grain and General Industries, specializing in construction, millwright, fabrications, demolitions, riggings, inspections and preventative maintenance.

11. Defendant hired Johnston in 2009, as a Field Foreman to supervise other employees and perform millwright work.

12. At all times relevant, Johnston was a non-exempt employee who was entitled to be paid time and a half for hours over forty (40) worked in any workweek.

13. Over the last year or so, Johnston was paid nineteen (\$19) per hour for “in town” work and twenty-one (\$21) dollars per hour for “out-of-town” or “overnight” work. Johnston was also paid twenty-five (.25) per mile for travel time. Before this time period, Johnston was paid even less.

14. Johnston would supervise a crew composed of two (2) to three (3) other employees in addition to himself. The Defendant would have three (3) to four (4) crews at any one time comprised of the same number of employees.

15. Johnston worked a majority of his work hours on “out-of-town” work. Johnston estimates that he worked fifty (50) to sixty (60) hours per work week and seven (7) to ten (10) of those hours were travel time.

16. For “out-of-town” work, Johnston and the other members of the crew would meet at the Defendant’s facility to load up the tools and materials needed into the Defendant’s truck and then drive to the work location as assigned by the Defendant. Then, after the work was completed, Johnston and his crew would drive back to the Defendant’s facility, unload the truck and head home.

17. The hours Johnston and the other similarly-situated employees spent traveling for work were not counted towards their work hours for calculation and payment of overtime wages by the Defendant.

18. Johnston is similarly-situated to Defendant’s other Field Foremen and Laborers in that the common practice and policy of refusing to pay overtime at a rate of not less than one and one-half times their regular rate of pay affected all current and former Field Foremen and Laborers who worked “out-of-town” for Defendant (“Members of the Class”).

19. Johnston is similarly-situated to the Members of the Class because they all were Field Foremen and Laborers; they were all paid hourly rates of pay; and they were all subject to Defendant’s unlawful policy and practice of refusing to properly pay overtime wages for work performed in excess of forty hours.

20. Defendant's failure to pay overtime compensation as required by the FLSA results from a policy or practice applicable to Johnston and the Members of the Class. Application of this policy or practice does not depend on the personal circumstances of Johnston or those joining this lawsuit. Rather, the same policy or practice that resulted in the non-payment of overtime to Johnston applied to all Members of the Class. Accordingly, the class is properly defined as: *All current and former Field Foremen and Laborers (or their functional equivalents) who have performed "out of town" work for Defendant and were paid mileage for travel time, but whose travel hours were not counted for overtime calculations and payment.*

21. Defendant knowingly, willfully, or with reckless disregard carried out its illegal pattern or practice of failing to properly pay overtime compensation with respect to Johnston and the Members of the Class.

V. CAUSES OF ACTION

COUNT I: FLSA – Failure To Pay Overtime

22. Johnston hereby incorporates paragraphs one (1) through twenty-one (21) of his Complaint as if the same were set forth at length herein.

23. Johnston and Members of the Class are non-exempt employees of Defendant who engaged in commerce and/or in an enterprise engaged in commerce.

24. Defendant intentionally and willfully failed to compensate Johnston and Members of the Class at least one and one-half times the minimum wage rate of pay for time they spent performing work-related duties/traveling for work in excess of a workweek of forty (40) hours.

25. Johnston and Members of the Class are entitled to recover from Defendant all compensation which they earned, as well as liquidated damages pursuant to the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.*

26. Defendant's actions in denying Johnston and Members of the Class their overtime compensation are intentional, willful, and/or done with reckless disregard for their statutory rights.

27. Johnston and Members of the Class have suffered damages as a result of the Defendant's failure to pay overtime compensation.

COUNT II: Kentucky State Law – Failure To Pay Overtime

28. Johnston hereby incorporates paragraphs one (1) through twenty-seven (27) of his Complaint as if the same were set forth at length herein.

29. Defendant intentionally and willfully failed to compensate Johnston and Members of the Class at least one and one-half times the minimum wage rate of pay for time they spent performing work-related duties/traveling for work in excess of a workweek of forty (40) hours.

30. Johnston and Members of the Class are entitled to recover from Defendant all overtime compensation which they earned, as well as liquidated damages pursuant to Kentucky State Law, KRS 337.285.

31. Defendant's actions in denying Johnston and Members of the Class overtime compensation are intentional, willful, and/or done with reckless disregard for their statutory rights.

32. Johnston and Members of the Class have suffered damages as a result of the Defendant's failure to pay.

COUNT III- Unjust Enrichment

33. Johnston hereby incorporates paragraphs one (1) through thirty-three (33) of his Complaint as if the same were set forth at length herein.

34. Defendant has failed and/or refused to pay overtime compensation due to Johnston and Members of the Class for their labor and services rendered during their tenure as an employee of Defendant.

35. Defendant has been unjustly enriched by keeping funds which are the property of Johnston and Members of the Class.

COUNT IV- Conversion

36. Johnston hereby incorporates paragraphs one (1) through thirty-five (35) of his Complaint as if the same were set forth at length herein.

37. Defendant knowingly or intentionally exerted unauthorized control over Johnston and Members of the Class' wages when it unlawfully failed to pay overtime compensation due to Johnston and Members of the Class.

38. Johnston and Members of the Class have suffered damages as a result of Defendant's actions.

VI. Request for Relief

WHEREFORE, Plaintiff, Jack Johnston, and all employees similarly-situated who join this action, respectfully request that this Court enter judgment in their favor and award the following relief:

A. Payment to Plaintiff (and those who have joined the suit) of all unpaid overtime compensation;

B. Payment to Plaintiff (and those who have joined the suit) of liquidated damages for all unpaid overtime compensation;

C. Payment to Plaintiff (and those who have joined the suit) of punitive damages for Defendant's failures and/or malice and willful actions;

D. Payment to Plaintiff (and those who have joined the suit) of compensation for any and all other damages suffered as a consequence of Defendant's unlawful actions;

E. Order injunctive relief sufficient to insure that Defendant ceases and desists from further unlawful employment practices in violation of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.*;

F. Order Defendant to pay pre-judgment and post-judgment interest to Plaintiff (and those who join the suit);

G. Order Defendant to pay Plaintiff (and those who join the suit) costs and attorney fees; and

H. Order all other relief this Court deems just and proper.

Respectfully submitted,

BIESECKER DUTKANYCH & MACER, LLC

By: /s/ Andrew Dutkanych
Andrew Dutkanych, #23551-49
411 Main Street
Evansville, Indiana 47708
Telephone: (812) 424-1000
Facsimile: (812) 424-1005
Email: ad@bdlegal.com

DEMAND FOR JURY TRIAL

Plaintiff, Jack Johnston, by counsel, requests a trial by jury on all issues deemed so triable.

Respectfully submitted,

BIESECKER DUTKANYCH & MACER, LLC

By: /s/ Andrew Dutkanych
Andrew Dutkanych, #23551-49
411 Main Street
Evansville, Indiana 47708
Telephone: (812) 424-1000
Facsimile: (812) 424-1005
Email: ad@bdlegal.com

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS JACK JOHNSTON	DEFENDANTS J&B MECHANICAL, LLC
(b) County of Residence of First Listed Plaintiff DAVISS (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant HENDERSON (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.	
(c) Attorney's (Firm Name, Address, and Telephone Number) Andrew Dutkanych III, Biesecker Dutkanych & Macer, 411 Main Street, Evansville, IN 47708 812-424-1000	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 1 Citizen of This State
<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	<input type="checkbox"/> 1 Incorporated <i>or</i> Principal Place of Business In This State
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 2 Citizen of Another State
<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<input type="checkbox"/> 2 Incorporated <i>and</i> Principal Place of Business In Another State
	<input type="checkbox"/> 3 Citizen or Subject of a Foreign Country
	<input type="checkbox"/> 3 Foreign Nation
	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)				
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	PROPERTY RIGHTS	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	LABOR	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input checked="" type="checkbox"/> 710 Fair Labor Standards Act	SOCIAL SECURITY	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 380 Other Personal Property	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 385 Property Damage Product	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 871 IRS—Third Party	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodati	<input type="checkbox"/> 530 General	<input type="checkbox"/> 875 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	IMMIGRATION	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 900 Appeal of Fee Determination
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)		Transferred from another district (specify)		Appeal to District Judge from Magistrate Judgment
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5
VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Fair Labor and Standards Act ("FLSA"), 29 U.S.C. § 201 <i>et seq.</i> and Kentucky state law Brief description of cause: Plaintiff alleges Defendant failed to properly pay overtime.				
VII. REQUESTED IN COMPLAINT:		CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		

VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE DOCKET NUMBER
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DATE	SIGNATURE OF ATTORNEY OF RECORD
April 17, 2017	/s/ Andrew Dutkanych III
FOR OFFICE USE ONLY	
RECEIPT #	AMOUNT
APPLYING IFP	JUDGE
MAG. JUDGE	

JS 44 Reverse (Rev. 12/07)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [J&B Mechanical Facing Unpaid 'Travel' Overtime Allegations](#)
